

No. 2917

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

SAMUEL W. BACKUS, as Commissioner of Immigration at the Port of San Francisco, Who is Now Succeeded by EDWARD WHITE, as Commissioner of said Port,
Appellant,
VS.
HARRY KATZ,
Appellee.

GOVERNMENT'S BRIEF

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of California,
First Division

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,

Attorneys for Appellant.

Filed

Filed this.....day of February, 1917. FEB 28 1917

FRANK D. MONCKTON, Clerk
F. D. Monckton
Clerk

By....., Deputy Clerk.

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STATEMENT OF THE CASE.

While this appeal is concerned only with one Harry Katz, alias Dr. Harry H. Katz, the records to be considered in determining this appeal make frequent mention of the "Katz Brothers" and one "Joseph Katz", the latter having been ordered deported by the Secretary of Labor and is now prosecuting his appeal in this Court, case Number 2812.

The warrant authorizing the arrest of appellee (p. 12 Immigration record) charges that the said appellee “has been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March

26, 1910, for the following among other reasons; that the said alien is unlawfully within the United States, in that he has been found connected with the management of a house of prostitution; and that he has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute, or prostitutes.”

An investigation which led up to the charge above stated was initiated by a committee of fifteen women members of the Parent-Teacher Association of Colfax, California, and the Secretary of this Association has given such a clear review of the situation on pages 75 and 76 of the Immigration record that the government deems it advisable to incorporate said review herein, as a part of its statement of facts. Said review reads as follows:

“Sometime during the year 1908 (?) one Abbott who distributed cards on the passenger platform at Colfax for the Winchester (?) hotel, San Francisco, and who also was agent for the Sacramento Bee, owned a small house behind a stable situated about opposite to where the passenger depot now stands. Abbott lived with several women at different times, and it became known that these women received other men. Abbott sold his property to Harry Katz who added some rooms and secured more women. Soon after Katz bought, the Railroad Company needed the property for its new line and so secured it from Katz. Katz then bought a house and lot from Frank Schillinger near and diagonally from the M. E. Church.

This house soon had as inmates several prostitutes. The house became notorious, and was a great nuisance to the immediate neighbors, one of whom, Charles W. Hanson, complained to Justice J. Kuenzley. Suit was instituted against Katz, but it was dismissed because of failure to secure a jury. Hanson then presented a petition, numerously signed, to the County Supervisors of Placer County, who ordered the District Attorney to proceed against Katz. The high fence which partially hid the house was removed and also the sign "Dressmaking", and the sign "Palace Rooms" was substituted. Before the District Attorney had succeeded in removing the house, Colfax had incorporated and so taken the authority out of the hands of the Supervisors, and it was vested in the Trustees of the City of Colfax. Hanson was unable to secure from the Trustees any assistance in abating the nuisance and finally dropped the matter as he was assured that Katz had promised to vacate as soon as he could procure land on which to build another house. This he did within the year 1911. The new location was on the County road at the northern entrance to town and has so remained to the present time. The madam at each location was one and the same person and known by the name of Nellie White and never known by any other name. This establishment at the north entrance of town, belonging to Harry Katz and his brother, Joe Katz, presided over by Nellie White, was known to all the community as a house of prostitution and was always referred to in such terms as are used in speaking of houses of prostitution.

During the month of July, 1913, a child of about ten was noticed about the premises of the aforesaid house and also was seen several times in company with Nellie White. On Hallowe'en night, 1913, it was understood on good authority that a number of grammar school boys were invited to a banquet at the aforesaid house. These and other occurrences aroused the members of the Parent-Teacher Association to take action to rid the town of this pernicious and criminal business. Fifteen women members of the Parent-Teacher Association of Colfax organized under the name of the Committee of Fifteen and commenced legal proceedings. During the investigations of this committee it was discovered that neither of the Katz Brothers were citizens of the United States, and that they were therefore subject to deportation as undesirable immigrants because of their connection with houses of prostitution.

The Immigration Service was notified and Mr. Griffiths came to Colfax to investigate the matter. The inmates of the "Redlight" district were brought into court and examined by Mr. Griffiths. After the examination warrants of arrest were served on Nellie White and Roma Burdell for keeping and maintaining houses of ill-fame. They were released on bail. It was the purpose of Mr. Griffiths to leave Colfax for San Francisco the following morning. The alien, Joe Katz, and the suspected alien, Nellie White, both promised to accompany him, but they failed to keep their promise and escaped. After remaining in hiding for two weeks more or less, Joe Katz surrendered

to the Federal officers, but Nellie White has thus far not been located and is supposed to be kept in hiding by the Katz Brothers.

At the rear of the Katz establishment at the west entrance to town, and about ten or twelve feet away, Joe Katz had erected a small outdoor sleeping room which he occupied, and for him to say that he knew nothing about the character of the house or the business of its occupants is absolutely absurd. He and his brother Harry also know that they were obliged to remove Nellie White to another locality because of the complaint filed in the Justice's court by the people of the neighborhood. It is also absurd to deny knowledge of the character of the inmates of their houses as it would be impossible for any one to be in or about Colfax for even a short space of time without knowing the character of these places.

The above facts were collected by the Committee of Fifteen—composed of women who have undertaken to rid their community of the houses of prostitution—and it has authorized its Secretary to sign the same before a Notary Public.

(Signed) L. F. S. PEERS

Secretary of the Committee of Fifteen.

State of California }
County of Placer } ss

On this 29th day of May in the year one thousand nine hundred and fourteen, before me, Morris Lobner, a notary public in and for the County of Placer, personally appeared L. F. S. Peers known to me to be the person

whose name she subscribed to the within instrument, and who duly acknowledged to me that she executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the County of Placer the day and year in this certificate first above written.

(Signed) MORRIS LOBNER,
Notary Public, in and for the County of
Placer, State of California."

The above review was considered a part of the evidence by the Secretary of Labor in its final decision of this case, as were all of the other affidavits and writings of every character which are attached to the Immigration record on file herein and to be considered in determining this appeal.

ASSIGNMENT OF ERRORS.

I.

That the Court erred in granting the writ of habeas corpus and discharging the alien, Harry Katz, from the custody of Edward White, Commissioner of Immigration;

II.

That the Court erred in holding that it had jurisdiction to issue the writ of habeas corpus in the above-entitled cause, as prayed for in the petition of the said Harry Katz for a writ of habeas corpus.

III.

That the Court erred in holding that the allegations contained in said petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus.

IV.

That the Court erred in finding that the evidence upon which the Secretary of Labor issued the warrant of deportation for the said Harry Katz was insufficient in character.

V.

That the Court erred in inquiring into the character and sufficiency of the evidence considered by the said Secretary of Labor in issuing the said warrant of deportation.

VI.

That the Court erred in holding that pure hearsay evidence and expressions of opinions tending to support the finding that the said Harry Katz had been found receiving, sharing in, or deriving benefits from the earnings of a prostitute, or prostitutes, was incompetent evidence and that it was error on the part of the said Secretary of Labor to base his order of deportation upon such evidence.

VII.

That the Court erred in holding that the said Harry Katz was illegally restrained of his liberty by said Edward White, Commissioner of Immigra-

tion, and that the evidence taken and considered in the hearing of said case under the Immigration Act of February 20, 1907, as amended by the Acts of March 26, 1910, and March 4, 1913, was insufficient to justify said respondent, as Commissioner of Immigration, to detain or deport the said Harry Katz.

VIII.

That the Court erred in discharging the said alien from the custody of said Edward White, Commissioner of Immigration.

ARGUMENT.

While there are many errors assigned, there is but one material point to be determined in this case and that is, whether or not the Secretary of Labor and his subordinates gave the appellee a fair hearing in considering the character of evidence introduced herein. The government desires to have it understood from the beginning that in determining the questions which this Court is now confronted with, the lower Court had before it the original record of the Bureau of Immigration, which is on file herein, and that this record was made a part of the government's return and is therefore properly before this Court to be considered by it in determining this appeal.

The lower Court in determining the question which is now before this Court rendered the following opinion:

“The records here which accompany the petition shows no real evidence against the petitioner. The affidavits are upon information and belief, and express only the opinions of the affiants. It is true that in this State the reputation of a house as a house of ill-fame, may be shown, but I know of no rule, here or elsewhere, which permits the ownership or management of such a house to be thus proved. There should be in my opinion some fair substantial testimony upon which to base an order deporting from this country an alien who has lawfully entered it. The record here is too long to recite, but the closest scrutiny of it will not reveal in all the testimony taken, whether in the presence or absence of petitioner, any competent evidence, and by that I mean evidence other than pure hearsay and expressions of opinion, tending to support the finding that petitioner was either connected with the management of a house of prostitution or has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes. It may be true that the presence of petitioner in this country is displeasing to many worthy people, but he may not be deported for that reason. He can only be deported after a fair hearing, and then only when the order deporting him finds support in something other than mere hearsay and opinion. The demurrer to the petition will be overruled, and a writ will issue returnable December 11th, 1915, at 10 o'clock A. M.

M. T. DOOLING,

November 26th, 1915.

Judge.”

From the foregoing opinion it can readily be seen that the lower Court based its opinion upon the character of evidence adduced by the government and it is now the object of this appeal to determine if possible just what character of evidence can be introduced and considered by the Secretary of Labor and his subordinates in an investigation of this character.

In order to assist this Court in determining the questions before it, the government deems it not only advisable, but necessary, to set forth the evidence introduced on behalf of the government before making any comments thereon.

AFFIDAVIT OF CHARLES H. HILL,

(pp. 77-78 Immigration record).

“State of New York, }
County of New York. } ss.

Charles H. Hill, being duly sworn, on oath deposes and says:

That he is a citizen of the United States, and resides at 601 West 160th Street, in the City of New York.

That from August nineteen hundred and nine to April nineteen hundred and ten, he lived in the town of Colfax, Placer County, California.

That the house in which he lived is located

on the Northwest corner of the P. McGinn property, in said town of Colfax.

That within a distance of about one hundred yards was located a house, known generally to the people of Colfax as a house of prostitution, and known generally as being conducted by one Harry Katz.

That the said house, known generally to the people of Colfax as a house of prostitution, was so situated that persons coming from the central and business section of the town, and entering or leaving said house, passed affiant's home.

That he spent many hours on the porch of his home in the day time, and slept on the porch at night.

That while the said house known generally to the people of Colfax and affiant, as a house of prostitution, had a sign reading "Dress-making" over the entrance, he saw many and different men enter and leave said house, during the day and night.

That while he slept on the porch of his home, he frequently overheard conversations of men going to and coming from said house, and that the substance of such conversations were of such a nature as to leave no doubt in the mind of the affiant, that the said house was a house of prostitution.

That he never saw more than three women at most, enter or leave said house.

That one of said women was known to him by sight as Nellie White.

That he saw said Nellie White enter and leave said house so often, and remain about about so much as to clearly indicate that she lived there.

That he saw a person known to him by sight as Harry Katz, enter and leave said house frequently, as much as several times a day, and on many days.

That he saw the said Harry Katz superintend alterations of said house.

That he saw the said Harry Katz enter the said house with parcels and leave without them, and in many and divers ways, shown more than an ordinary interest in it.

That in company with one Charles Hanson, a resident of Colfax, he complained to the District Attorney of Placer County, that said house was a disorderly house of ill repute, and a nuisance.

That to the best of his knowledge and belief the said Harry Katz conducted said house, known generally to the people of Colfax as a house of prostitution.

(Signed) CHARLES H. HILL,
General Manager, Lash's Bitters Company.
New York-Chicago-San Francisco.

Subscribed and sworn to before me this nineteenth day of May, nineteen hundred and fourteen.

(Signed) CHAS. H. VAN HAGEN,
N. Y. Co. No. 22, Notary Public."

AFFIDAVIT OF JACOB KUENZLY,
(pp. 98-99 Immigration record.)

“The People of the State of California,
Plff.

vs.

Henry H. Katz,

Defendant.

On July 2d, A. D. 1909, complaint filed, charging the defendant with the crime of misdemeanor, to wit: letting apartment for the purpose of prostitution, alleged to have been committed in the County of Placer, State of California, on or about July 2d, A. D. 1909, as fully set forth in the complaint herein:

Warrant of arrest issued July 2d, A. D. 1909.

The defendant was brought into Court on July 3rd, A. D. 1909.

The complaint was read to him, and he demanded Counsel before entering his plea; the Court set the time for pleading to July 7th, A. D. 1909, at 10 o'clock A. M., and admitted the defendant to bail in the sum of one hundred dollars. The defendant furnished bail, J. Reck and W. J. McCleary being the sureties.

On July 7th, A. D. 1909, the defendant appeared with his Counsel, George W. Hamilton, and demurred to the complaint herein, and the Court agreed to hear the argument on the demurrer at once.

The Court overruled the demurrer, and granted the defendant time until July 9th, A. D. 1909 at 10 o'clock A. M. to enter his plea.

On July 9th, A. D. 1909, at 10 o'clock A. M., the defendant appeared in Court with his Counsel, and entered his plea of not guilty. The Counsel for defendant then presented an affidavit for a change of venue; the Court granted time until July 12th, A. D. 1909 at 10 o'clock A. M., to file counter-affidavits.

On July 12th, A. D. 1909, at 10 o'clock A. M., the time set for the hearing on the motion for a change of venue, neither complainant nor the defendant appeared in Court, and the Court upon due consideration of the allegations in the affidavit of the defendant, and the circumstances in the case, overruled and denied the motion for a change of venue, and set the time for trial herein, to July 16th, A. D. 1909, at 10 o'clock A. M.

On July 12th, A. D. 1909, affidavit against change of venue filed.

On July 13th, A. D. 1909, writ of venire issued; also subpoena on behalf of the People. Subpoena on behalf of the People on July 14th, A. D. 1909.

On July 15th, A. D. 1909, additional subpoena issued on behalf of the People.

On July 15th, A. D. 1909, subpoena issued on behalf of the defendant.

On July 16th, A. D. 1909, the parties appeared in Court, the People being represented by District Attorney C. A. Tuttle. The Court proceeded to impanel the jury. The Counsel for defendant objected to the panel on the ground, that it had not been summoned according to law, as the Court had inserted the names of the jurors summoned in the venire.

The Dist. Atty. agreed to the objection taken, and the Court sustained the objection, and discharged the jurors, and adjourned until 1 o'clock P. M. on the same day.

At 1 o'clock P. M. the case was resumed. The new list of jurors summoned was called, and sworn, the number being twenty-three. The following were excused for cause: R. L. Wills, H. Spukler, N. T. Collins, E. Murray, Fred Schulze, N. E. Booth, S. K. Williams, and M. A. Jarrett.

The following were excused by the People: J. L. Bird, F. L. Austin, H. Pucci.

The following were excused by the defendant: Ed. Bigley, J. E. Watts, T. H. Hill, A. S. Winchester.

At this stage there were five jurors who had been passed by both parties, namely: A. J. Benjamin, A. J. Wall, L. Cortopassi, E. Campbell, and P. Nicholls—H. J. Snook and W. G. Cunningham had been called, but were not examined on account of the panel being exhausted, and not a sufficient number of citizens being present to make a complete panel.

The District Attorney then suggested that the case be continued to July 22d next, and that time was agreed to by the Attorney for the defendant; therefore it was ordered by the Court, that the case be continued to July 22d, A. D. 1909, at 10 o'clock A. M., and instructed the jurors sworn in, not to discuss this case with any person.

During the examination of the jurors, the Attorney for the defendant asked the prospect-

ive jurors, whether or not they understood, that the law in regard to the reputation or nature of the house in question in this case, by common repute, could not be applied in this case.

Objected to by the District Attorney.

Objection sustained by the Court. Excepted to by the Attorney for the defendant.

Writ of venire issued on July 17th, A. D. 1909.

On July 22d, A. D. 1909, at 11 o'clock the parties appeared in Court.

District Attorney Tuttle made a statement, that an understanding was had with the defendant and his Attorney, that the house referred to in the complaint, should not be used or let hereafter for immoral purposes, and with that purpose in view, and the consent and acquiescence of the complainant herein, he made a motion to dismiss this case; and in consideration of all the circumstances in the case, and the improbability of conviction of the defendant in the event of proceeding with the case to its close, on account of the bias of the jurors, the Court dismissed the case, and discharged the jury, witnesses, and defendant.

(Sgd) JACOB KUENZLY,
Justice of the Peace.

State of California }
County of Placer } ss.

I, the undersigned Jacob Kuenzly, Justice of the Peace of Township No. 13, do hereby certify that the foregoing is a copy or abstract of the proceedings in the case of the People of

the State of California against Henry H. Katz, as the same appears on my docket.

Witness my hand, this 22d day of April, 1914.

(Sgd) JACOB KUENZLY,
Justice of the Peace."

AFFIDAVIT OF FRANK SCHILLINGER.

(p. 101 Immigration record.)

"State of California, }
County of Placer. } ss.

Frank Schillinger, of lawful age, being first duly sworn, deposes and says:

That he is now and at all times herein mentioned has been a citizen of the United States, residing in the Town of Colfax, in said County and State; that during the early portion of the year 1909 he was the owner and residing upon Lots 8 and 9 of Block E, on Church Street, in said Town of Colfax, with his family consisting of his wife and two (2) children; that by grant, bargain and sale deed, dated June 15th, 1909, the affiant sold and delivered to Harry H. Katz the hereinabove described lots, including the two (2) room house above mentioned as his residence, situate thereon, for the sum of five hundred (500) dollars; that he was persuaded to sell to said Katz because said Katz stated that he would buy the lots next to affiant and build thereon if affiant did not sell said lots to him; that said Katz had been conducting a house of prostitution near the railroad track in said Town of Colfax, and that affiant told said Katz that if he undertook to use said residence of

affiant as a house of prostitution that he, (Katz) would get into trouble, and that the neighbors would drive him out; that said Katz replied to affiant that the neighbors would get used to it; that thereafter said Katz used said property as a house of prostitution, remodeling the same and adding small rooms thereto, where women plied their profession of prostitution and great numbers of men came, both day and night, to the great scandal and resentment of the neighborhood, and that such use continued for about one (1) year.

(Signed) FRANK SCHILLINGER.

Subscribed and sworn to before me this 25th day of April, 1914.

(Signed) MORRIS LOBNER,

Notary Public in and For the County of Placer, State of California."

AFFIDAVIT OF MINNIE G. WILLIAMS

(pp. 148-149-150 Immigration Record.)

"State of California, }
County of Placer. } ss.

Minnie G. Williams, being duly sworn deposes and says: That she is a citizen and has been for the past twenty years a citizen of the City of Colfax, California. To the ridiculing of the counsel for the defense of the affidavits presented by members of the Committee of Fifteen and others, the affiant makes reply as follows:

The counsel for the defense avers again and again that the affidavits of a goodly number of respectable citizens should be given no credence, 'in the face of the denial of Dr. Katz'. Each and every person making affidavit to the disreputable character of Dr. Katz, is a person of irreproachable character, a person of noted veracity. Is it reasonable to suppose that these people would be guilty of registering such appalling accusations against any individual unless they were driven to it by good and sufficient reasons? Any one of the accusers of Dr. Katz would lose a hand rather than besmirch the character of an innocent person. The affiant avers that the denials of a man of the character of Dr. Katz should be given no credence in the face of the sworn statements of so many upright citizens. Dr. Katz is a menace to our community, a menace to any community wherein he resides, and the removal of this menace is the only motive that has prompted the institution of proceedings against him. Dr. Katz and his associates have had ample warning, have purposely been given ample time, in order that they might withdraw peaceably. Dr. Katz was not ignorant of the fact that he was conducting a business in direct violation of the laws of California, but he chose to defy the laws of California, and it is the business of the State to uphold its laws.

The women composing the organization known as the Committee of Fifteen are not suffragettes, are not militants, are not agitators. They are teachers, business women, home-loving women, women on whom rests no stain, women of modesty, refinement and culture.

These women realize the danger threatening their homes, threatening all the Colfax homes, and it is this that prompted them to come out into the public glare and fight. Women that will not fight for their homes and loved ones are unworthy the name of women. When the laws of the State of California are so drastic against the crime of prostitution, the plaintiffs in this case can see no reason for permitting the debauchery of the young people of Colfax in order that the Katz Brothers may be enabled to pick up easy money by exploiting the shame of women.

The Counsel for the defense avers that the affidavits of the complainants should be given no credence as they are based on information and belief. Information and belief is all that is required by law. The people opposed to the crime of prostitution are in the habit of keeping as far away from brothels as possible and therefore could not testify to occurrences from actual experience. The people that frequent brothels, and who could give damaging evidence if they would, will not do so. As no man would be forced to incriminate himself, and as the law recognizes the fact that it would be almost impossible to get actual evidence, it is very plainly stated in the law that common repute is all that is necessary for incriminating in this particular form of crime.

The men who have made affidavits to the good character of Harry Katz and Joe Katz are not men with high moral standards of morality. They are of the class that thinks the sowing of wild oats is a necessity, that manliness and libertinism are synonymous terms. The most of

them are interested directly or indirectly in the liquor business. They would not be held up as examples for the sons of the complainants to emulate.

The affiant further deposes and says that every affidavit offered in the accusation of Katz Brothers is absolutely relevant, material and pertaining to the case. Considerable of the evidence in the affidavits was presented for the purpose of giving the lie to the testimony of the Katz Brothers, which it did. If the Katz Brothers would swear falsely to a part of the testimony there is no reason for believing any part of their testimony.

The Katz's stated they had no knowledge of the character of the inmates occupying their house at the west entrance to town. The affidavits of C. W. Hanson shows that Harry Katz was brought to trial because of his ownership of this disorderly house, and because of the nuisance it was to the neighborhood. It is quite evident that there was no feeling of animosity or spite, when the complainants allowed the case to be dismissed upon Harry Katz promising to never again attempt to allow the house to be used for immoral purposes. All this can be further verified by the court records. All of which proves beyond question that the testimony of the Katz Brothers and the affidavits of D. A. Russell and P. W. Crider are absolutely false. The statement of Harry Katz, that he could not remove a fence because a carpenter had put it up is worthy of an imbecile. We expected the counsel for the defense would have sense enough to avoid calling attention to so silly a statement.

Harry Katz did not, as far as we know make any further attempt to conduct a brothel within his house at the west entrance to town, but he, as soon as possible, got possession of a house and lot at the north entrance to town, and proceeded to establish his prostitutes there and continue his nefarious business. That Harry Katz has not lived here continuously four years is irrelevant, immaterial and not pertaining to the case. He was interested enough here to leave his business in Stockton and come to Colfax several days each month as shown by the former affidavit. The affiant further states and wishes to emphasize that during the visits of Harry Katz to Colfax, that beyond any shadow of doubt, he resided with woman, Nellie White, whom he claims was merely a tenant, and of whose character he knew nothing. Harry Katz testifies that he had nothing to do with the house at the north entrance to town. The affiant showed in her former affidavit that Harry Katz paid part of the bills, and that the bills paid by Joe Katz were first submitted to Harry Katz which shows conclusively that Harry Katz had a great deal to do with the aforesaid house, and reveals the falseness of the testimony of both Harry Katz and Joe Katz. The plaintiffs in this case, who represent and are acting for the moral element of Colfax appeal to the State of California, appeal to the Federal Government to be relieved of the presence of these arch fiends. We pray that unscrupulous lawyers may not be permitted to juggle with the laws of the State and Nation—we pray that justice may be allowed to prevail. In witness

whereof the aforesaid affiant has hereunto set her hand and seal.

(Sgd.) MINNIE G. WILLIAMS,

Subscribed and sworn to before me this 29th day of July, 1914.

(Sgd.) MORRIS LOBNER,
Notary Public."

REPORT SUBMITTED TO THE SECRETARY OF LABOR ON BEHALF OF CITIZENS OF COLFAX.

(pp. 147-148 Immigration record.)

"Colfax, California, July 26, 1914.

Hon. Secretary of Labor,
Washington, D. C.

Sir:

We, the undersigned citizens of Colfax, wish to protest to you against the efforts made to prevent the deportation of Harry and Joseph Katz, charged with being undesirable aliens and keepers of a house of prostitution in Colfax. We make this protest not because of any feeling of ill-will or malice against these aliens individually, but because we feel that their influence and actions tend to lower the moral tone of the City and because of the baneful influence they have exerted and are exerting upon the youth of this City.

Affidavits have been prepared and furnished by friends of the defendants claiming that they, the defendants, are moral citizens and that they have never been connected with the business of prostitution in this City. We know that these affidavits do not contain the truth because for years Harry and Joseph Katz have been owning a house of prostitution in this City and it has been a matter of common knowledge that they were profiting by the earnings of prostitutes.

The reason the deportation of these individuals was and is being sought is the fact that they have been ringleaders in the work of prostitution and that we felt the only way in which we could protect our growing youths was to abolish that trade. The appeal to local authorities was vain because of the activity of certain of the men who have signed affidavits in their behalf. Being men with some financial backing and political in standing and connected with the liquor traffic they could wield sufficient influence to prevent justice in the local courts. We felt that the Federal government being uninfluenced by local matters could by the deportation of Harry and Joseph Katz put the seal of official disapproval upon their nefarious traffic and protect the young of our City. That anyone could be found who would testify under oath that Harry and Joseph Katz were not guilty as charged was beyond our belief. Because such have testified we feel it our duty to urge you to listen to the testimony of fathers and mothers who are interested.

We, the undersigned, again affirm our belief

in the guilt of Harry and Joseph Katz, and ask that our City be protected from them.

Respectfully submitted,

(Sgd.)

Robert A. Peers, Physician, father of two boys,

Lucy F. Peers, wife of Robert A. Peers,

Morris Lobner, Retired R. R. Agt., father of 2 daughters,

O. E. Williams, merchant, father of 2 daughters, and 1 son,

Grant McMullen, merchant, father of 1 daughter and 1 son,

Geo. Elbert, merchant, father one son,

C. E. Schoonoover, telegrapher, 3 daughters, 1 son,

(Mrs.) Mamie L. Schoonoover, wife of C. E. Schoonoover,

Mary Hanson, Housewife and schooltrustee,

J. Robinson (?) father of one son,

Wm. G. Carter, minister, father of four sons,

Esther V. Carter, mother of four sons,

Emma L. Williams, wife of O. E. Williams,

E. H. Honn, rural mail carrier, father of two daughters and 1 son,

Rosa A. Honn, mother of two daughters and 1 son, wife of E. H. Honn, is a housewife,

W. B. Fowler, hotel keeper, father of one son,

Harvey L. Wolfson, rancher, father of two daughters and 1 son,

Katie P. Wolfson, mother of two daughters and 1 son, wife of Harvey L. Wolfson,

F. G. Irving, rancher, father of one daughter,

Mrs. Mary K. Irving, wife of F. G. Irving,

Minnie G. Williams, bookkeeper, wife of S.
 K. Williams,
 S. K. Williams, lumber merchant,
 J. L. Rollins, M. D., father of 8 children,
 Eliza Lang Perkins,
 Jeannie K. Lobner, wife of Moris Lobner,
 Frances E. West, wife of Geo. E. West,
 Sadie A. Robinson, mother of one boy."

AFFIDAVIT OF EDWARD H. HONN.

(p. 153 Immigration record.)

"State of California }
 County of Placer } ss.

Edward H. Honn being duly sworn deposes and says, that he is now and for over five years past has been a resident of Colfax, California, that he knows H. H. Katz and knows of him when it was commonly understood that he conducted and managed a house of prostitution in said City of Colfax in 1909, in Church Street, that after the arrest of said H. H. Katz for his ownership of said brothel in 1909, he proceeded within a few weeks thereafter to get possession of a house and lot at the north entrance of said City of Colfax and proceeded to enlarge said house and equip it for prostitution and to establish therein the prostitute Nellie White whom he formerly had within his house in aforesaid Church Street, and according to general repute continued, until his arrest in 1914, to conduct and manage said house of ill fame at the north entrance to said city of Col-

fax; that H. H. Katz came regularly and continuously from Stockton or Sacramento to Colfax and remained in Colfax several days each month with headquarters in aforesaid house of ill fame, that the prostitute Nellie White, was commonly described as 'Nellie Katz' and as the 'Katz woman.'

The affiant further avers that it is understood, and, ever since the said H. H. Katz established said house of prostitution at the north entrance of town it has generally been accepted as a fact by the people of Colfax that the Katz Brothers, H. H. Katz and Joseph Katz, conducted said house of prostitution at the north entrance to town, managing and directing the same, and that no one was ever heard to deny that they conducted and managed the said house of prostitution until they, the Katz Brothers were arrested in 1914.

(Sgd.) EDWARD H. HONN,
Rural letter carrier.

Subscribed and sworn to before me this first day of August, 1914.

MORRIS LOBNER
Notary Public in and for Placer
County, California."

AFFIDAVIT OF FERGUS GRAHAM IRVING
(p. 97 Immigration record.)

"State of California }
County of Placer } ss.

Fergus Graham Irving, being duly sworn, on oath deposes and says that he is a citizen of

the United States, that he has lived in the town of Colfax, California, for fifteen years. That he came to Colfax in the year 1885, remained in Colfax continuously until 1898. That he returned to Colfax in February, 1912, and has been a resident of the town of Colfax ever since. He is married and his wife's name is Minnie Kimble Irving. That he knows Nellie White by sight and has seen her at various times in the town of Colfax in the house of prostitution on the County road in the Northern part of Colfax, which house is owned and controlled by Katz Brothers. That he has frequently seen Harry Katz during the last two years about said house of prostitution at different times of the day and that he seemed to be entertaining the female inmates of the house, and superintending repairs and improvements about the house and grounds. That the house is well known by reputation in the town of Colfax, as a house of prostitution, where there are several prostitutes living and plying their profession. That the place is frequented day and night by great numbers of men; that he has seen them going to and coming from the said house of prostitution.

(Sgd.) FERGUS GRAHAM IRVING.

Subscribed and sworn to before me this 25th day of April, 1914.

(Sgd.) MORRIS LOBNER.

Notary Public in and for the County
of Placer, State of California."

AFFIDAVIT OF LUCY F. PEERS,

(p. 154 Immigration record.)

“State of California }
 County of Placer } ss.

Lucy F. Peers being duly sworn deposes and says: She is now and during all times herein mentioned was a resident of the City of Colfax, Placer County, State of California. That in August 1913 the affiant in company with Jeannie K. Lobner called upon Geo. H. Hamilton, then District Attorney of Placer County, and asked him to abolish the house of prostitution run by H. H. Katz and Joseph Katz, situated at the north entrance to Colfax.

That said District Attorney, Geo. W. Hamilton, replied that he knew the house mentioned, that H. H. Katz was a personal friend and client of his, that he (Hamilton) defended H. H. Katz on a previous occasion in 1910 when accused of conducting a house of prostitution at the west entrance of Colfax, that he (Hamilton) knew more about this place than the complainants, that he (Hamilton) knew the character of this house at the north entrance to Colfax, that it was generally known that the Katz Brothers were associated with the house, and that any one who tried to deny it would be a fool, that he (Hamilton) had influence with H. H. Katz and that he could go up to Colfax that very afternoon and persuade H. H. Katz that he had conducted the place long enough, that it was now time to quit the business; that affiant and Jeannie K. Lobner then and there asked H. H.

Katz's former attorney, Mr. Geo. W. Hamilton, then District Attorney of Placer County, to do as he said he had the power to do. Said Hamilton thereupon refused unless a warrant was sworn to and case brought to trial.

(Sgd.) LUCY F. PEERS

Subscribed and sworn to before me this 31st day of July, 1914.

MORRIS LOBNER,
Notary Public for Placer County."

The government desires to call attention to the fact that this affidavit throws considerable light on the affidavit of George W. Hamilton, who was evidently an enthusiastic supporter of the Katz Brothers.

AFFIDAVIT OF ROBERT A. PEERS

(p. 155 Immigration record.)

"State of California }
County of Placer } ss.

Robert A. Peers, of lawful age, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned has been a citizen of Colfax, Placer County, State of California, and has been a practicing physician therein; that he has been acquainted with Harry Katz, also known as Dr. H. H. Katz, the alien described under department Warrant No. 5377L202, dated March 18, 1914, for a period of five years last past; that he knows the property described as lots 8 and 9

of Block E on Church St. and affiant avers that he was one of several citizens who petitioned the then District Attorney of Placer County, Charles Tuttle, to have the nuisance, consisting of a house of prostitution run by said Harry Katz on the lots 8 and 9, aforesaid, abated. The affiant also avers that said Harry Katz was arrested for conducting a house of prostitution at these premises during the year 1909. The affiant avers that it was a well-known fact that Harry Katz was arrested in the year 1909, because he was managing a house of prostitution and that he was brought before Justice of the Peace Kuenzley in an effort to close said house of prostitution. The affiant also avers that since that time the two brothers, Harry Katz and Joseph Katz, have conducted a house of prostitution on the property described as lot 1, Block 2, additional survey of the town of Colfax and it is a well-known fact in Colfax that the Katz Bros. were interested in the management of this house of prostitution, over which Nellie White, a notorious prostitute presided as madam. The affiant avers that he has never heard these things denied until the arrest of Joseph and Harry Katz in 1914. The affiant further avers that he has known Joseph Katz for a period of three years last past. The affiant further avers that he has frequently heard the property on lot 1, Block 2, aforesaid, described as the 'Katz house' and as 'Katz whore-house'. The affiant further avers that Harry Katz made frequent visits to Colfax previous to his arrest and that it was generally understood by the people of Colfax that such visits were because of his interest in

the management of the house of prostitution where Nellie White presided as madam.

(Sgd.) ROBERT A. PEERS, M. D.

Subscribed and sworn to before me this 10th day of August 1914.

(Sgd.) MORRIS LOBNER,
Notary Public in and for the County
of Placer, State of California."

Besides the affidavits set forth herewith, the government calls attention to various other affidavits filed in this case and considered by the Secretary of Labor in making the order of deportation of said Harry Katz. The affidavits are as follows:

AFFIDAVIT OF ROBERT F. POTTOL

(p. 79 Immigration record.)

"State of California }
County of Placer } ss.

Robert F. Pottol, being duly sworn deposes and says that he is a citizen of the United States and has lived about five miles north of the City of Colfax, California, for nearly two years past; that he is not married; that in going to and from his home to Colfax he has been compelled to pass the 'Red-light' district which lies on the County road; that by common repute he has known the exact location of the said 'Red-light' district; that about one year and one half ago, he was passing on the railroad track near the

alleged house of prostitution kept by one Nellie White, he was accosted by a woman apparently an inmate of said house, who invited him to go to the house with her; that he has occasion to pass these houses of prostitution two or three times a week; that he has seen at various times women who were inmates of the said houses going into them; that these houses were spoken of and by common repute were known as houses of ill-fame; that he has passed these places as late as February 1914; that Charles Rath, an acquaintance had informed him that he (the said Rath) had visited these houses and contracted a loathsome disease.

(Sgd.) ROBERT F. POTTOL

Subscribed and sworn to before me this 20th day of May, 1914.

(Sgd.) MORRIS S. LOBNER
Notary Public in and for the County
of Placer, State of California."

AFFIDAVIT OF J. T. TAYLOR

(p. 80 Immigration record.)

"State of California }
County of Placer } ss.

J. T. Taylor, being duly sworn, deposes and says he is a citizen of the United States, that he has lived in the vicinity of the City of Colfax, State of California, for five years past; that he is not married; that on going to and from the said City he is compelled to pass a certain house

the management of the house of prostitution where Nellie White presided as madam.

(Sgd.) ROBERT A. PEERS, M. D.

Subscribed and sworn to before me this 10th day of August 1914.

(Sgd.) MORRIS LOBNER,
Notary Public in and for the County
of Placer, State of California."

Besides the affidavits set forth herewith, the government calls attention to various other affidavits filed in this case and considered by the Secretary of Labor in making the order of deportation of said Harry Katz. The affidavits are as follows:

AFFIDAVIT OF ROBERT F. POTTOL

(p. 79 Immigration record.)

"State of California }
County of Placer } ss.

Robert F. Pottol, being duly sworn deposes and says that he is a citizen of the United States and has lived about five miles north of the City of Colfax, California, for nearly two years past; that he is not married; that in going to and from his home to Colfax he has been compelled to pass the 'Red-light' district which lies on the County road; that by common repute he has known the exact location of the said 'Red-light' district; that about one year and one half ago, he was passing on the railroad track near the

alleged house of prostitution kept by one Nellie White, he was accosted by a woman apparently an inmate of said house, who invited him to go to the house with her; that he has occasion to pass these houses of prostitution two or three times a week; that he has seen at various times women who were inmates of the said houses going into them; that these houses were spoken of and by common repute were known as houses of ill-fame; that he has passed these places as late as February 1914; that Charles Rath, an acquaintance had informed him that he (the said Rath) had visited these houses and contracted a loathsome disease.

(Sgd.) ROBERT F. POTTOL

Subscribed and sworn to before me this 20th day of May, 1914.

(Sgd.) MORRIS S. LOBNER
Notary Public in and for the County
of Placer, State of California."

AFFIDAVIT OF J. T. TAYLOR

(p. 80 Immigration record.)

"State of California }
County of Placer } ss.

J. T. Taylor, being duly sworn, deposes and says he is a citizen of the United States, that he has lived in the vicinity of the City of Colfax, State of California, for five years past; that he is not married; that on going to and from the said City he is compelled to pass a certain house

of prostitution run by one Nellie White on the County road; that during the erection of said house he frequently saw Harry H. Katz superintending and directing about the place and acting in a manner indicating proprietorship; that he knows the said Harry H. Katz and his brother Joe Katz; that he knows the said house to be a house of ill-fame; that on two occasions he has been solicited by the inmates of said house to enter said house.

(Sgd.) J. T. TAYLOR,

Subscribed and sworn to before me this 19th day of May, 1914.

(Sgd.) MORRIS LOBNER
Notary Public in and for the County
of Placer, State of California."

AFFIDAVIT OF JEANNIE KENDALL LOBNER

(p. 81 Immigration record.)

"State of California }
County of Placer } ss.

Jeannie Kendall Lobner, being duly sworn, deposes and says that she is a citizen of the United States and has lived in the City of Colfax, California, for twenty-eight years past; that she is married and living with her husband and family; that during the time that Nellie White, a prostitute, kept a house of ill-fame on the corner of Church Street and Rising Sun Road in the said City of Colfax, which said house was in plain view from the affiant's residence, she

often saw men going to and coming from said house of ill-fame, especially on Sunday, when they could be seen going there throughout the day singly and in groups of four or five.

(Sgd.) JEANNIE KENDALL LOBNER

Subscribed and sworn to this 19th day of May, 1914.

(Sgd.) MORRIS LOBNER

Notary Public in and for the County of Placer, State of California.”

AFFIDAVIT OF HARVEY L. WOLFSEN

(p. 94 Immigration record)

“State of California }
County of Placer } ss.

Harvey L. Wolfesen, being duly sworn, deposes and says he is a citizen of the United States, and that he has lived in the vicinity of the City of Colfax, California, for two years last past; that his residence is about 11½ miles north of the said city; that he is a married man and has children; that on his way to and from the said City he is compelled to pass a certain house of prostitution run by one Nellie White on the county road; that during the winter of 1912 and 1913 he has seen Dr. Harry H. Katz about the said house apparently superintending the repairing; that he believes and is of the opinion that the house referred to is owned by the Katz Brothers, known as Joe and Harry; that on two or three occasions during

the past year, while he himself was passing the said house, the female inmates thereof known as prostitutes did make overtures to him to enter their house of ill-fame; that on one occasion during said time he remembers particularly on going to his home with some friend, the woman in Nellie White's house did attempt to induce him and his friend to stop at the said house by whistling and gesticulation; that the before mentioned house is well known by reputation in the City of Colfax as a house of prostitution; that there are several prostitutes plying their vocation there; that the place is frequented day and night by a great number of men; that the affiant has seen them coming and going to said house of prostitution.

(Sgd.) HARVEY L. WOLFSEN.

Subscribed and sworn to before me this 19th day of May, 1914.

(Sgd.) MORRIS LOBNER,
Notary Public in and for the County of
of Placer, State of California."

AFFIDAVIT OF MINNIE G. WILLIAMS

(p. 94+ Immigration record.)

"State of California }
County of Placer } ss.

Minnie G. Williams, being duly sworn, on oath deposes and says that she is a citizen of the United States and that she has been a resident of the City of Colfax, California, for

twenty-eight years last past; that she knows Nellie White by sight; that she knows Harry H. Katz and Joe Katz.

The house occupied by said Nellie White, which is situated at the northern entrance to the City of Colfax, and alleged to belong to the Katz Brothers, the affiant has never heard referred to in any other way than the 'Red-lights', and 'Hook-shop', the 'whore-house', or the 'Sporting house'. The affiant further states that the character of the said house is so well known in the community that she has even heard children use the above terms in speaking of this said house.

In September, 1911, the affiant overheard a city official giving directions to a couple of strangers who were inquiring for a 'sporting house'. The directions given by said city official were explicit and could lead to no other house but the one occupied by Nellie White. It is the firm belief of the affiant that the aforementioned house is and always has been a house of prostitution and is so considered by the entire community.

The affiant has noted that Harry H. Katz' visits to Colfax were frequent, up to the time of his arrest, on or about April 13, 1914; that during his visits, the said Harry H. Katz was wont to pass the affiant's house several times a day along the road leading to the house occupied by Nellie White, at the north entrance to town; the conduct of the said Harry H. Katz was that of a man going to and from his abiding place, and it is the firm belief of the affiant

that the aforesaid house, occupied by Nellie White was the headquarters of Harry H. Katz whenever he was in Colfax.

The affiant is the bookkeeper for the Colfax yard of the Auburn Lumber Company, and she further deposes and says that from November 13, 1911, to October 13, 1913, the bills for material used in enlarging and improving the house at the north entrance to town, occupied by Nellie White, were made out in the name of Joe Katz; that on one occasion said Joe Katz came into the office to pay his bill; that she, the affiant, asked this Joe Katz for his bill so she could receipt same; that he, Joe Katz, said he did not have it with him, as he had sent it to his brother Harry in Stockton; that she, the affiant, offered in the future, to render all bills in duplicate; that Joe Katz said he would be glad to have the bills rendered in this way, so that he and his brother could each have a copy. The affiant further states that from October 13, 1913, to February 6, 1914, all bills for material furnished and delivered to the house herein discussed were made out in the name of Harry Katz, in obedience to the orders of Joe Katz; that all material furnished by the Auburn Lumber Company and charged to Joe Katz or Harry Katz went to the establishment occupied by Nellie White. The affiant has been in a position to observe many times Joe Katz and Harry Katz in conference with each other, discussing legal looking documents.

The Katz Brothers were, to all appearances, a close corporation in their business affairs.

The affiant further deposes and says that the copies of the bills hereunto attached to the affidavit are true copies of some of the aforesaid house; that the claims in said bills have been fully satisfied by the Katz Brothers.

(Sgd.) MINNIE G. WILLIAMS,

Subscribed and sworn to before me this 20th day of May, 1914.

(Sgd.) MORRIS LOBNER,

Notary Public in and for the County of
of Placer, State of California."

AFFIDAVIT OF CHARLES W. HANSON

(p. 96 Immigration record.)

"State of California }
County of Placer } ss.

Charles W. Hanson, being duly sworn, on oath deposes and says that he is a citizen of the United States, that he has lived in Colfax, California, continuously for the last forty-five years; that he is married and that his wife's name is Mary Hanson and that they have two children, a boy and a girl. That in July 2d, 1909, he made a complaint to Justice Kuenzley, against Harry Katz, for renting his house for immoral purposes; that when the case was called a Jury could not be obtained; that he then circulated a petition asking the County Supervisors to restrain said Harry Katz from renting his residence for this purpose, stating that the place was located in the Western residence part of the

town of Colfax, on the County Road and in close proximity to two churches; that he obtained the signatures of thirty or forty people, who lived near or had to pass by this house on their way to and from town; that the house originally consisted of but three rooms, but numerous additions and sheds were added until the place looked like a bathing establishment; that the board fence about eight feet high was built along the road; red curtains ornamented the windows; that an electric piano and a graphophone were put in and that a dress making sign was displayed. That they seemed to have a good line of customers, all men. That the Supervisors instructed the District Attorney, C. A. Tuttle, to investigate. That the fence was ordered taken down, also the sign. That another sign, 'Palace Rooms', was substituted. That at this time Colfax voted on incorporation and became a City of the sixth class, and that this action took the case out of the jurisdiction of the Board of Supervisors and placed it into the hands of the City Trustees; that the Trustees advised the inmates of this house (there were usually three inmates) to move to another place; that they then moved to the house owned until recently by Joe Katz. That the Madame at both of these houses to the best of his knowledge and belief was Nellie White: that he had never heard her called 'Williams'. That he saw Harry Katz go to and from the place many times and that it was impossible for him not to know the character of it: That it was generally known as a house of ill-fame throughout the town, being the only house of the kind at that time. That Harry

Katz tried to purchase property from his father, Mr. Charles Hanson, and that said Charles Hanson refused to sell to him, believing that said Harry Katz intended to use the property for immoral purposes.

(Sgd.) CHARLES W. HANSON

Subscribed and sworn to before me this 19th day of May, 1914.

(Sgd.) MORRIS LOBNER
Notary Public in and for the County
of Placer, State of California."

Besides the foregoing affidavits, Joseph Katz stated to D. J. Griffiths, one of the Immigration Inspectors, that Harry Katz was interested in the property in question. The statement of the Immigration Inspector covering this phase of the case is found on page 110 of the Immigration record and is as follows:

"On the 24th of last February I went to Colfax and investigated the matter. I spoke to Nellie White, who was known as a notorious prostitute who had been doing business in that town for several years, and elsewhere in this State, and she stated she was paying Joseph Katz \$25 a month for the rental of the house and that she had two girls there and was conducting a house of prostitution. When I confronted Joseph Katz with this information he said that he was not the party interested but that his brother, Dr. Harry Katz, was the

party. On the morning of the 25th of February the inmates of the two houses which had been established in that town appeared before the Justice' court for a hearing and all swore they were citizens of the United States except the White woman. They pleaded 'not guilty' and asked for a jury trial and the inmates were placed on \$150 bail. This bail was furnished for Nellie White by Joseph Katz with money furnished him by a wholesale liquor dealer named Durnim who, it is alleged, furnished the liquor and refreshments for Nellie White's house. He is one of the men who makes an affidavit to the good character and reputation of Joseph Katz. That day, upon learning that Joseph and Nellie White were aliens, I immediately applied by telegraph to the Department for warrants of arrest. Before I could receive the necessary instructions from Washington, Nellie White and Joseph Katz had mysteriously disappeared from the town. Subsequently Joseph Katz surrendered himself. The last information I had concerning Nellie White was that she was seen with Joseph Katz and Dr. Katz in Sacramento on the evening of the 25th of February last. Subsequently I learned that Dr. H. H. Katz was an alien and application was made for warrant of arrest in his case and he has been given a hearing as stated."

On page 119 of the Immigration record Joseph Katz admitted that he told the Immigration Inspector that his brother, Harry, owned the property in question, and in this connection the following questions were asked and answers given:

“Q. Well Harry, your brother has some interests there has he not?

A. He has property.

Q. Where were his interests located?

A. In Colfax.

Q. Nellie White had a house of prostitution and at your brother Harry's place in Colfax before she went out to your house?

A. I don't know anything about it sir.

Q. Did you not know that she was driven from there and took refuge at your place?

A. No sir.

Q. They have had considerable trouble with houses of prostitution in Colfax lately?

A. I don't know. I mind my own business and never butt into anybody else's business.

Q. Do you remember telling me when I first spoke to you about this matter that Harry was the one that was interested in those places?

A. I just happened to think about it and I told you Harry. I did not know who you were and I did not think you had any business to know anything about my affairs. You did not tell me who you were or that you had any authority. You were a stranger to me and therefore I did not tell you.”

The evidence clearly shows that after the investigation of the Katz Brothers begun, Nellie White, the party who occupied the premises in question as an alleged prostitute, disappeared, and on page 114 of the Immigration record, Harry Katz admitted that he, his brother Joseph, and Nellie White were all together at the office of Attorney Luke Howe in Sacramento.

After all of the matters to which the Court's attention has been called, together with various affidavits filed on behalf of the Katz Brothers, the Immigration Inspector who had given the case a very thorough consideration, among other things, stated the following:

“In this case there seems to be a much closer relation than mere landlord and tenant existing between the Katz Brothers and Nellie White. The Committee of Fifteen Ladies of Colfax, who represent many of the women there, and a number of men who are opposed to the red-light district, emphatically insist in stating that Nellie White, a prior acquaintance of the Katz Brothers, was brought to that town for the sole purpose of conducting a house of prostitution, and that she was installed in the Katz house with that object in view, and their contention seems to be sustained by the record in the case. The Katz Brothers were the first to open a house of ill-fame in Colfax, and have continued the illegitimate business for the five years last past. The people who are opposed to the brothel aforesaid insist that you call the Secretary's attention to the fact that at least one phase of the law governing the subject has been violated beyond a reasonable doubt, in this, that the Katz Brothers did receive, share in, and derive benefit from the earnings of a prostitute, in the shape of rents, and that they did assist and protect her as the madam of the brothel, and furnish her with the necessary conveniences to carry on her nefarious business in violation of the statutory provision.”

It is true, and the government is willing to admit, that there are various affidavits in the Immigration record to the effect that the Katz Brothers bore a good reputation, but an examination of these affidavits, and also the affidavits of the government, will disclose that the said affidavits introduced in behalf of the Katz Brothers were either signed by people living out of the City of Colfax, and who for that reason were not in a position to know the facts which necessarily would be of a local nature, or by men engaged in the saloon business, and who no doubt had benefited from the business conducted by the Katz Brothers.

With the evidence now before the Court upon which the Secretary of Labor based his order of deportation, the question to be determined is whether or not the proceedings of the Immigration Bureau were manifestly unfair, or whether the action taken by the said Bureau was such as to prevent a fair investigation, or whether the action taken by the said Bureau amounted to a manifest abuse of discretion. It was necessary to determine the foregoing, for, unless there was unfairness, or an abuse of discretion, the proceedings are not open to attack.

Low Wah Suey vs. Backus, 225 U. S. 460,
U. S. vs. Ju Toy, 198 U. S. 253; 49 L. Ed.
 1040,

Chin You vs. U. S., 208 U. S. 852,
Tang Tun vs. Edsell, 223 U. S. 673.

The findings of the Secretary of Labor are final and conclusive.

Ekiu vs. U. S., 142 U. S. 651,

Lee Lung vs. Patterson, 186 U. S. 170,

The Japanese Immigrant case 189 U. S., page 86,

Tang Tun vs. Edsell, 223 U. S. 673,

Low Wah Suey vs. Backus, 225 U. S. 460,

U. S. vs. Ju Toy, 198 U. S. 253,

Zakonaite vs. Wolf, 226 U. S. 272,

Chin You vs. U. S. 208, U. S. 8,

Healy vs. Backus, 221 Fed. 358.

In *Lee Lung vs. Patterson*, *supra*, the Court said:

“It was decided in *Nishimura Ekiu’s* case that Congress might intrust to an executive officer the final determination of the facts upon which an alien’s right to land in the United States was made to depend, and that if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to reexamine the evidence on which he acted or to controvert its sufficiency. This doctrine was affirmed in *Lem Moon Sing vs. U. S.*, 158 U. S. 538, 39 L. Ed. 1082; 15 Sup. Ct. Rep. 967 and at the present term in *Fok Young Yo vs. U. S.*, 185 U. S. 306.”

In *Low Wah Suey vs. Backus*, the Court said:

“A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair; that the action of the executive officers was such as to prevent a fair investigation, or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final.

U. S. vs. Ju Toy, 198 U. S. 253,
Chin Yow vs. U. S., 208 U. S. 8,
Tang Tun vs. Edsell, 223 U. S. 673.”

From the very nature of the investigation, the hearings of the executive officers must be of a summary character.

Chin Yow vs. U. S., 208 U. S. 8,
Sibray vs. U. S., 227 Fed. 1,

and not subject to the formalities of procedure and rules governing the admissibility of evidence.

Ex parte Garcia, 205 Fed. 53,
Fong Yue Tung vs. U. S., 149 U. S. 698,
U. S. vs. Hong Chang, 134 Fed. 19,

Jew Yuen Case, 188 Fed. 350,
Choy Gum vs. Backus, 223 Fed. 487,
Siniscalchi vs. Thomas, 195 Fed. 701,
Jeung Bow vs. U. S., 228 Fed. 868.

The hearings may be conducted upon affidavits, ex parte depositions and interviews.

Ekiu vs. U. S., 142 U. S. 651,
Low Wah Suey vs. Backus, 225 U. S. 460,
Ex parte Garcia, 205 Fed. 53,
White vs. Gregory, 213 Fed. 768,
Jeung Bow vs. U. S., supra.
Ex parte Chin Him, 227 Fed. 131,
Ex parte Wong Yee Toon, 227 Fed. 247.

In *Ekiu vs. U. S.*, supra, Mr. Justice Gray said:

“An alien immigrant, prevented from landing by any such officer claiming authority to do so under an act of Congress, and thereby restrained of his liberty, is doubtless entitled to a writ of habeas corpus to ascertain whether the restraint is lawful (cases cited) and Congress may, if it sees fit, as in the statutes in question, in *United States vs. Jung Ah Lung*, just cited, authorize the courts to investigate and ascertain the facts on which the right to land depends. But on the other hand, the final determination of those facts may be intrusted by Congress to executive officers, and in such case, as in all others, in which a statute gives discretionary power to an officer, to be exercised

by him upon his own opinion of such facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by the law to do so, is at liberty to re-examine or controvert the sufficiency of the evidence on which he acted. *Martin vs. Mott*, 25 U. S. Wheat. 19, 31 (6:537, 541); *Phil. & T. R. Co. vs. Stimpson*, 39 U. S. 14 Pet. 448, 458 (10: 535, 540); *Benson vs. McMahon*, 127 U. S., 457 (32: 234); *Oteiza y Cortes vs. Jacobus*, 136 U. S. 330 (34: 464)."

In *ex parte Wong Yee Toon*, supra, in discussing the power of courts to open up a case of Immigration officers, the court said:

"x x x The latter can interfere only when there is a total failure of all evidence upon which a fair-minded man would feel justified in acting. I certainly cannot find that there is any such lack here. If the question were one upon which it was my duty to pass, I am not prepared to say that I would not reach the same conclusion as that upon which the Secretary of Labor has acted."

In *ex parte Garcia* the alien was charged with violation of the Immigration Act in the same respect as appellee is charged in this case, and the Court, after giving the various questions which arose exhaustive consideration, said with respect to the use of affidavits, the following:

"Now, to the exact question, whether a trial by affidavits should be considered a 'fair hear-

ing': If the answer be in the affirmative, the writ must be denied; for, as we have already seen, there is no evidence of bad faith, and admittedly, if *ex parte* affidavits may be considered, there was before the Secretary ample evidence to justify the issuance of the warrant. So far as I have been able to discover, the specific point is not ruled by any decision of controlling authority; but certain general principles applicable to such hearings have in varying language been repeatedly enunciated. It is well settled that trials of this character are not governed by the rules of criminal procedure. *Fong Yue Ting vs. United States*, 149 U. S. 698, 730, 13 Sup. Ct. 1016, 37 L. Ed. 905; *United States vs. Hung Chang*, 134 Fed. 19, 25, 67 C. C. A. 93.

In *Lee Lung vs. Patterson*, 186 U. S. 168, 176, 22 Sup. Ct. 795, 797 (46 L. Ed. 1108), the Supreme Court said:

'But jurisdiction is given to the Collector over the right of the alien to land, and necessarily jurisdiction is given to pass on the evidence presented to establish that right. He may determine the validity of the evidence, or receive testimony to controvert it, and we cannot assent to the proposition that an officer or tribunal, invested with jurisdiction of a matter, loses that jurisdiction by not giving sufficient weight to evidence, or by rejecting proper evidence, or by admitting that which is improper.' "

The mere fact that appellee has been in this country for several years does not render him immune to a prosecution and deportation under the section of the Immigration Laws, of which he is charged with a violation.

Zakonaite vs. Wolf, 226 U. S. 272,
Bugajewitz vs. Adams, 228 U. S. 584,
Ex parte Garcia, 205 Fed. 53,

And although a criminal prosecution of appellee for the same offense might have failed, yet said appellee would be subject to an order of deportation.

Lewis vs. Frick, 233 U. S. 291,
Bugajewitz vs. Adams, 228 U. S. 585.

In the case now under consideration, the record shows that the criminal charge placed against said appellee in the City of Colfax for conducting a house of prostitution some time prior to the present investigation was dismissed upon the understanding that the said appellee would discontinue conducting the business of operating a house of prostitution, but his subsequent acts have proven that his promise in this respect was made in bad faith.

In view of the foregoing, the government is now willing to rest its case and await the ruling of this Court to determine whether, in view of all the evidence submitted and proceedings taken on behalf of the government, there was an abuse of discre-

tion or any unfairness on the part of the Secretary of Labor and his subordinates in ordering the deportation of appellee.

Respectfully submitted,

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